

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

ROLANDO RUIZ,
TDCJ No. 999145,

Petitioner,

v.

CIVIL NO. SA-03-CA-303-OG

RICK THALER, Director,
Texas Department of Criminal
Justice, Correctional
Institutions Division,

Respondent.

ORDER GRANTING IN PART PETITIONER'S MOTION FOR BRIEFING

The matters before the Court are (1) the parties' advisories indicating they both wish to waive oral argument and do not wish to present any further evidence in this cause, filed December 2, 2010, docket entry nos. 142 & 143, (2) petitioner's unopposed motion requesting a briefing schedule allowing both parties sixty days from the date they are served with a copy of the statement of facts from the evidentiary hearing in this cause to present additional briefing to this Court, filed December 2, 2010, docket entry no. 144, and (3) the status of this cause.

The Parties' Advisories

The parties have advised this Court they do not wish to present any further evidence or witnesses and do not wish to furnish the Court with oral argument. Therefore, the court will cancel the evidentiary hearing and oral argument previously scheduled to take place on January 4, 2011.

Request for Post-Hearing Briefing

The parties appeared and presented evidence on November 2-3, 2010. A summary of the distressingly meager evidence presented during the hearing in this cause has already been the subject of this Court's Order issued November 22, 2010, docket entry no. 141. The parties were offered an opportunity to furnish this Court with oral argument but have chosen to suggest an alternative consisting of additional "briefing." Both parties have already furnished this Court with ample and extensive briefing supporting their respective positions on the law applicable to this case. This Court personally witnessed all of the testimony and has examined all of the documents offered into evidence during the hearing held November 2-3, 2010. As this Court explained at length in its Order issued less than three weeks after the hearing in this cause, the vast majority of petitioner's family members and friends who testified before this court offered little-to-no information based upon their personal knowledge. While petitioner's experts did offer some new insights, almost all of their information appears to have come from either the petitioner himself (in statements made to either Dr. Munsinger or Dr. Silverman which this Court must review in the context of petitioner's extensive trial testimony) or from petitioner's family members (who either testified before this Court or testified during petitioner's trial). Moreover, this Court's review of the expert opinions of Dr. Munsinger and Dr.

Silverman will take place in the context of petitioner's extensive trial testimony, in which petitioner himself admitted to having abused alcohol and drugs extensively from an early age, claimed to have abused massive amounts of drugs in the days preceding his capital offense, and vigorously denied experiencing an abused childhood.

This Court concludes there is no reason to extend the disposition of petitioner's ineffective assistance claims herein more than thirty days beyond the date necessary for the Court reporter to prepare the record from the evidentiary hearing held last month. All counsel of record were present for that hearing and should be capable of furnishing any additional "briefing" in an expeditious manner. The parties' counsel should be able to

Accordingly, it is hereby **ORDERED** that:

1. The evidentiary hearing and oral argument previously scheduled for January 4, 2011 in this cause is **CANCELLED**.
2. The writ of habeas corpus ad testificandum previously issued to obtain petitioner's presence for the January 4, 2011 hearing is **VACATED** and **RESCINDED**. The Clerk shall communicate this Order to all responsible parties, including the U.S. Marshal Service and the Texas Department of Criminal Justice.
3. Numbered paragraphs 5 and 6 contained in this Court's Order issued November 22, 2010, docket entry no. 141, are **VACATED**;

in all other respects, the provisions of that Order remain in full force and effect.

4. Petitioner's unopposed motion requesting post-hearing briefing, filed December 2, 2010, docket entry no. 144, is **GRANTED in part and DENIED in part** as set forth hereinafter.

5. On or before thirty (30) days after the Court reporter makes available to counsel of record the verbatim transcript from the evidentiary hearing held November 2-3, 2010 in this cause, the parties shall file any post-hearing briefing they wish this Court to consider in ruling on petitioner's ineffective assistance claims herein.

SIGNED and ENTERED this 7 day of December, 2010, at
San Antonio, Texas.



ORLANDO L. GARCIA
United States District Judge